IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. A.L.Y., DOB 09/24/88, Appellant.	)	No. 56645-8-I **DIVISION ONE** UNPUBLISHED OPINION FILED: September 25, 2006

Per Curiam — A.L.Y. appeals his convictions for second degree robbery. He argues the state did not prove appellant's intent to deprive the victims' of their property. Because the State proceeded against appellant on accomplice liability, the State only needed to prove that he had general knowledge of the crime and aided in its commission. The evidence that the appellant witnessed the principal's implicit threats and physically received the property was sufficient to convict for second degree robbery on accomplice liability. We affirm.

FACTS

A.L.Y., a juvenile, was convicted on two counts of second degree robbery

in a juvenile proceeding. The robbery charges stemmed from a January 16, 2005 incident in which appellant and Chris Borbon, an adult, confronted four boys. B.D., C.R., J.B., and D.B., all juveniles, who were walking on First Avenue South in Federal Way, WA when they saw A.L.Y., Borbon and three other companions walking toward them. Borbon began to hassle the youths and accuse them of breaking windows. D.B. laughed and angered Borbon who asked why he was laughing and then forcefully pushed D.B. causing him to fall back into the street. Borbon then began removing his coat and watch as if preparing for a fight. The boys told Borbon and A.L.Y. that they did not want trouble. Either Borbon or A.L.Y. responded that they could settle the situation with $20. C.R. and B.D. gave $15 and $4, respectively, to A.L.Y. who then gave the money to Borbon. The pair walked away after receiving the money.

According to A.L.Y.'s statement to the police, Chris Borbon had suggested they "mess" with the four boys and A.L.Y. agreed. Borbon instigated the confrontation with the youths and engaged in the physical contact with D.B. A.L.Y. told police he asked the kids how much money they had, told them he wanted $20 and received the money before handing the cash over to Borbon. He also included in his statement that when Borbon gave him half of the proceeds he felt uncomfortable and wanted to return the money.

The State charged A.L.Y. with two counts of second degree robbery based on accomplice liability theory. The trial court convicted on both counts and entered findings of fact and conclusions of law.

DECISION

On appeal, A.L.Y. contends an insufficiency of evidence to convict on second degree robbery charges because (1) the State did not prove the required nexus between the threat of force and the taking of property and (2) A.L.Y. did not demonstrate intent to deprive the victims of the property. Appellant also argues that even if the evidence is sufficient to show that Chris Borbon committed second-degree robbery, there is insufficient evidence to convict A.L.Y. as his accomplice due to confusion as to who demanded the money. Appellant urges the court to strike finding of fact 10 as a scrivener error because it does not reflect the court's oral ruling about his role in the robbery and conclude there was insufficient evidence to convict him of accomplice liability.

A claim of insufficient evidence admits the truth of the State's evidence and all reasonably drawn inferences. State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980), aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980). The appellate court must examine the evidence in the light most favorable to the prosecution and reverse only upon a finding that no rational trier of fact could have found the appellant guilty beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980).

A.L.Y. was convicted of second-degree robbery under RCW 9A.56.190 which requires a showing that "[a] person. . . unlawfully takes personal property from the person of another or in his presence against his will by the use or

threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone." RCW 9A.56.190. As defined in the statute, robbery requires a connection between the use of force and taking of the property. "Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking." This nexus must link the force or fear with the taking or retaining of the property. State v. Johnson, 155 Wn.2d 609, 611, 121 P.3d 91 (2005).

Appellant contends that the evidence does not demonstrate the required nexus because Borbon did not assault D.B. to facilitate the taking but because he believed that D.B. mocked him. However, when the evidence and inferences are construed in favor of the prosecution, the assault and threats clearly relate to the taking.

An overt threat is not needed to support a robbery conviction. State v. Collinsworth, 90 Wn. App. 546, 553, 966 P.2d 905 (1997). Threats can be implied from the defendant's actions and statements in the context of the situation. Id. at 553-54. "Any force or threat, no matter how slight, which induces an owner to part with his property is sufficient to sustain a robbery conviction." State v. Ammlung, 31 Wn. App. 696, 704, 644 P.2d 717 (1982). The four victims all testified that after Borbon shoved D.B. they were scared and felt threatened. Several of the boys worried the situation might escalate into further violence with someone getting beaten or hurt. Even if the supposed mocking spurred Chris Borbon to assault D.B., Borbon and A.L.Y. used the

assault as an implicit threat to facilitate the taking of property.

C.R. told the pair they did not want trouble and either A.L.Y. or Borbon said they could avoid additional trouble with money. In response to this statement, C.R. and B.D. handed A.L.Y. a total of $19. Based on the testimony, the boys clearly felt that they needed to give A.L.Y. and Borbon cash in order to prevent further confrontation. A reasonable trier of fact could have found, beyond a reasonable doubt, that A.L.Y. and Borbon demonstrated an implicit threat of more force that related directly to the taking of property.

Appellant additionally claims that the State presented insufficient evidence that he intended to deprive the victims of their money based on his statement that he subsequently wanted to return the money. Intent to steal is an essential non-statutory element of robbery in Washington. Personal Restraint of Lavery, 154 Wn.2d 249, 255, 111 P.3d 837 (2005). The State prosecuted A.L.Y. based on accomplice liability which exists if a person "[w]ith knowledge that it will promote or facilitate the commission of the crime, he (i) solicits, commands, encourages, or requests such other person to commit it; or (ii) aids or agrees to aid such other person in planning or committing it" RCW 9A.08.020(3). This statute predicates criminal liability on general knowledge of the crime. State v. Davis, 101 Wn.2d 654, 657-58, 682 P.2d 883 (1984); State v. Hoffman, 116 Wn.2d 51, 104, 804 P.2d 577 (1991). An accomplice "need not participate in or have specific knowledge of every element of the crime nor share the same mental state as the principal." State v. Berube, 150 Wn.2d 498, 511, 79 P.3d

1144 (2003), citing State v. Sweet, 138 Wn.2d 466, 479, 980 P.2d 1223 (1999), and Hoffman, 116 Wn.2d at 104. Thus, A.L.Y. did not need to have the intent to steal, just knowledge that his actions were facilitating the crime.

A.L.Y. contends that the State did not establish that he demanded the money from the boys and therefore has no basis for accomplice liability. The trial court specifically recorded in written finding of fact 10 that A.L.Y."then told the boys that the only way to settle the situation was with money." Given this finding, A.L.Y. clearly aided Borbon with the knowledge that his actions facilitated a crime as required by the accomplice statute. RCW 9A.08.020(3).

The appellant requests that this court strike finding of fact 10 because it disagrees with the court's oral ruling and alleges that without this finding there is insufficient evidence for conviction. Upon ruling at the conclusion of the trial, the judge found "at least reasonable doubt about whether [A.L.Y.]. . .was the one who said money would solve this problem." Subsequently, after the findings of fact were prepared by the prosecution the finding concluded that A.L.Y. had demanded the money. The prosecutor, appellant's trial attorney and judge all signed the findings of fact that contained this determination. Appellant claims the discrepancy between the oral ruling and written finding of fact 10 must have been scrivener error and should be struck. However, an oral decision "is no more than a verbal expression of his informal opinion at that time. It is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned. It has no final or binding effect, unless

formally incorporated into the findings, conclusions, and judgment." Ferree v. Doric Co., 62 Wn.2d 561, 567, 383 P.2d 900 (1963). A reviewing court can use oral rulings to interpret findings and conclusions but an inconsistent oral decision cannot be used to impeach written findings. Id. Since the judge's oral ruling and written findings are inconsistent in this case, the writing controls and finding of fact 10 must be upheld.

Even without this finding of fact a reasonable trier of fact could find A.L.Y. guilty of robbery via accomplice liability beyond a reasonable doubt. To establish that appellant was an accomplice the State must show evidence that he "aided" in the commission of the crime. RCW 9A.08.020(3). "Aiding" in a crime includes "all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his. . . presence is aiding in the commission of the crime." State v. Dove, 52 Wn. App. 81, 87, 757 P.2d 990 (1988) (quoting WPIC 10.51). Regardless of whether A.L.Y. demanded the money, he accepted the money from the boys. As the trial judge stated "[t]here is no doubt that [A.L.Y.] was the one who accepted and retained the money, knowing full well that the adult bully had, in fact, terrified these little kids." This participation is enough to support accomplice liability.

The evidence presented in this case provides sufficient basis for a reasonable trier of fact to find A.L.Y. guilty beyond a reasonable doubt. Although Chris Borbon appears to have been the instigator and aggressor,

A.L.Y. played a role in intimidating the boys and taking their property by physically accepting their money. This is enough to satisfy the requirements for second degree robbery

based on an accomplice theory. We therefore affirm the decision of the trial court.

Affirmed.

For the court:

Appelwick, C.J.

Baker, J.

Coburn, J.